

## §81.12

writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(c) If a party files a motion, the party shall serve a copy of the motion on the other party on the filing date by hand-delivery or by mail. If agreed upon by the parties, service of the motion may be made upon the other party by facsimile transmission.

(d) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(e) The date of service of a motion is determined by the standards for determining a filing date in §81.12(d).

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

[54 FR 19512, May 5, 1989, as amended at 57 FR 56795, Nov. 30, 1992]

### §81.12 Filing requirements.

(a) Any written submission to an ALJ or the OALJ under this part must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) If a party files a brief or other document with an ALJ or the OALJ, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail. If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(c) Any written submission to an ALJ or the OALJ must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d)(1) The filing date for a written submission to an ALJ or the OALJ is the date the document is—

- (i) Hand-delivered;
- (ii) Mailed; or
- (iii) Sent by facsimile transmission.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holi-

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day, the filing deadline is the next business day.

(e) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(f) If a document is filed by facsimile transmission, a follow-up hard copy must be filed by hand-delivery or by mail within a reasonable period of time.

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

[54 FR 19512, May 5, 1989, as amended at 57 FR 56795, Nov. 30, 1992]

### §81.13 Mediation.

(a) Voluntary mediation is available for proceedings that are pending before the OALJ.

(b) A mediator must be independent of, and agreed to by, the parties to the case.

(c) A party may request mediation by filing a motion with the ALJ assigned to the case. The OALJ arranges for a mediator if the parties to the case agree to mediation.

(d) A party may terminate mediation at any time. Mediation is limited to 120 days unless the mediator informs the ALJ that—

- (1) The parties are likely to resolve some or all of the dispute; and
- (2) An extension of time will facilitate an agreement.

(e) The ALJ stays the proceedings during mediation.

(f)(1) Evidence of conduct or statements made during mediation is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during mediation.

(2) A mediator may not disclose, in any proceeding under this part, information acquired as a part of his or her official mediation duties that relates to any fact in issue in the case or any matter relevant to the merits of the case.

(Authority: 20 U.S.C. 1221e-3, 1234 (f)(1) and (h), and 3474(a))